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In re Application of	:	OFFICE OF PETITIONS
PAUL L. DEANGELIS	:	
Application No. 09/842,484	:	DECISION DISMISSING
Filed: April 25, 2001	:	PETITION
Attorney Docket No. 5820.601	:	

This is a decision on the petition filed August 24, 2001, requesting that the above-identified application be accorded a filing date of April 25, 2001, with Figure 2 as a part of the original disclosure.

The petition is dismissed.

The application was filed on April 25, 2001. However, on June 26, 2001, the Office of Initial Patent Examination mailed a Notice stating, *inter alia*, that the application had been accorded a filing date of April 25, 2001; however, Figure 2 appeared to have been omitted.

In response, on August 24, 2001, applicant filed the present petition and a copy of Figure 2. Applicant admits that Figure 2 was not submitted with the original application papers due to a clerical error. However, applicant argues that the omitted Figure 2 does not contain any new matter, and therefore, should be accorded a filing date of April 25, 2001.

Whether Figure 2, filed on August 24, 2001, contains new matter is not the issue. Either Figure 2 was present in the Office on the filing date of the application or it was not. Because Figure 2 was not present on April 25, 2001, it cannot be considered a part of the original disclosure of the application. Therefore, the application cannot be accorded the filing date of April 25, 2001, with Figure 2 as a part of the original disclosure. The issue of new matter is one appropriately addressed by the primary examiner during prosecution of the application after the filing date of the application has been determined.

Since applicant seeks to add the drawing of Figure 2 to the above-identified application on the basis that the drawing is not new matter, no petition is necessary for that purpose. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See MPEP § 608.02(a). The appropriate procedure is by way of amendment requesting the entry of Figure 2. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

The petition fee will not be refunded because the petition was not necessitated by any error on the part of the Office.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 25, 2001, using Figures 1 and 3-10 filed on that date.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Christina Tartera Donnell at (703) 306-5589.

Beverly M. Flanagan

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